

FILED

AUG 22 2007

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

EDDIE MONEY,

Plaintiff,

v.

MY/ZP NORTH LAMAR, LTD,
d/B/A CHUY'S,

Defendant.

CASE NO. **A07CA 713 SS**

COLLECTIVE ACTION

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

SUMMARY

1. Eddie Money (Money) brings this collective action against MY/ZP North Lamar, Ltd. d/b/a Chuy's (Chuy's) because Chuy's fails to pay the minimum wage required by the Fair Labor Standards Act (FLSA). Specifically, Chuy's pays its servers at sub-minimum wage rates but does not adhere to the FLSA's "tip credit" requirements. Accordingly, Money and all similarly situated employees are entitled to unpaid minimum wages, liquidated damages, attorney's fees and costs.

JURISDICTION AND VENUE

2. This Court has subject matter under 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

3. Venue is proper in the Southern District of Texas - Houston Division because all, or a substantial part, of the acts and conduct charged herein occurred in this district and/or because Chuy's maintains its corporate headquarters in this district.

PARTIES

4. Money is a resident of Harris County, Texas. Money was an employee of Chuy's within the meaning of the FLSA. His consent to participate in this collective action is attached hereto as Exhibit 1.

5. The class of similarly situated employees consists of all waiters (servers) employed by Chuy's within the past three years. These similarly situated persons are referred to as the "Members of the Class."

6. Chuy's is a Texas Limited Liability Company with its corporate headquarters in Austin, Texas. Chuy's annual gross revenues exceed \$500,000 per year. Chuy's employees handle goods (such as sodas, beers, liquors, food items) which were created for or have traveled in interstate commerce. Chuy's is an "enterprise engaged in commerce" within the meaning of the FLSA. Chuy's acted in the interest of an employer with respect to Money and the Members of the Class. Chuy's may be served with process through its registered agent, Michael R. Young, 1623 Toomey Road, Austin, TX 78704.

FACTS

7. Chuy's owns and operates numerous restaurants in Texas. Chuy's employed Money as a server at one its restaurants in Austin.

8. Chuy's does not pay its servers the applicable minimum wage. Instead, Chuy's paid its servers at rate below the applicable minimum wage and claimed a "tip credit" based on tips its servers received from Chuy's customers.

9. An employer can take a credit against its minimum wage obligations for tips received by its employees. To qualify for this tip credit, an employer must permit its employees to retain the tips they receive other than those tips which are contributed to a valid tip pool.

10. However, Chuy's required its servers to give up a portion to a tip pool. These tips were then given to kitchen employees who do not qualify for participation in a tip pool under the FLSA. Because Chuy's policy of requiring servers to share their tips with kitchen workers violates the FLSA's tip credit requirements, Chuy's failure to pay its servers the minimum wage for all hours worked violates the minimum wage provisions of the FLSA.

11. Chuy's knew or showed reckless disregard for whether its policy of requiring servers to share their tips with kitchen workers was a violation of the FLSA.

COLLECTIVE ACTION ALLEGATIONS

12. Chuy's policy of requiring servers to share their tips with kitchen workers was applied across the board to all Chuy's servers.

13. These servers performed job duties which were similar to those performed by Money, such as serving food and drinks to patrons.

14. As it did with Money, Chuy's paid these servers less than the minimum wage.

15. However, because it cannot meet the FLSA's tip credit requirements, Chuy's is not entitled to a tip credit against the minimum wage owed to any of these servers. Therefore, like Money, these servers are entitled to the difference between the minimum wage and the amount they were actually paid for each hour worked.

16. Because Chuy's' tip pool policy results in these similarly situated workers receiving less than the minimum wage, notice of this collective action is appropriately sent to:

All servers employed by Chuy's in the past three years.

CAUSE OF ACTION

17. Money incorporates herein all allegations contained in preceding paragraphs.

18. Chuy's' practice of requiring servers to share a portion of their tips with kitchen employees violates the FLSA. For each hour worked, Money and the Members of the Class are entitled to the difference between the minimum wage and the amount they were actually paid.

19. Additionally, Money and all those similarly situated are entitled to an amount equal to their unpaid wages as liquidated damages, as well as reasonable attorney's fees and costs of this action.

JURY DEMAND

20. Money demands a trial by jury.

PRAYER

21. Money requests judgment be entered against Chuy's awarding him and all similarly situated employees:

- a. the difference between the applicable minimum wage and the amount they were paid for each hour worked;
- b. an equal amount as liquidated damages;
- c. reasonable attorneys' fees, costs, and expenses of this action; and
- d. such other and further relief as may be required by law.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

EDDIE LEE MONEY,
on Behalf of Himself and Others
Similarly Situated

Plaintiff,

vs.

MY/ZP NORTH LAMAR, LTD, d/b/a
CHUY'S

Defendant.

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A07CA 713SS
CIVIL ACTION NO. _____

NOTICE OF CONSENT

I, EDDIE LEE MONEY, hereby consent to be a party plaintiff in this case, which is a suit
to recover unpaid wages under the Fair Labor Standards Act.

DATE

7/23/07

Signature

